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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/765,210	01/28/2004	Graham Williams	14966.0002	7638

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WASHINGTON, DC 20036

EXAMINER

WEINSTEIN, STEVEN L

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 10/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/765,210

Applicant(s)

WILLIAMS ET AL.

Examiner

Steven L. Weinstein

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 14-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 7/2/04 and 9/13/05.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____.

Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-13, drawn to a bakery product, classified in class 426, subclass 94.

II. Claims 14-20, drawn to a method for increasing the shelf life of a bakery product, classified in class 426, subclass 310.

The inventions are independent or distinct, each from the other because the product of Group I can be made by methods other than that recited in Group II. For example, the product of Group I does not require the addition of the preservative by spraying. The product can have the preservative associated with it by dipping the product into a solution of the preservative or applying the preservative to an enveloping wrapper which wrapper transfers the preservative to the product.

Because these inventions are independent or distinct for the reasons given above, and have acquired a separate status requiring separate searches as shown by their different classification, restriction for examination purposes as indicated is proper.

During a telephone conversation with Mr. Fox on 10/17/06, a provisional election was made with traverse to prosecute the invention of Group I, claims 1-13. Affirmation of this election must be made by applicant in replying to this Office action. Claims 14-20 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application

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by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1-6 and 8-13 are rejected under 35 U.S.C. 102(e) as being anticipated by Tangprasertchai et al (7,014,878).

In regard to claim 1, Tangprasertchai et al discloses a non-yeast leavened bakery product ("yeast and/or other leavening agents are included" –col.5,para.4) with increased shelf life, comprising a baked product having a water activity greater than .8 (and thus fitting the description of an intermediate or high moisture baked product), and wherein the surface of the bakery product has deposited thereon an amount of natamycin (" included in the dough and/or applied to the exterior surfaces of the bread product after baking" –col.6, line 30plus), which natamycin functions as a microbial inhibitor which is sufficient to keep the product mold free for an extended period of time. Thus, contrary to what has been urged in the specification, applicants are not the first to use natamycin to coat non-yeast leavened baked goods having the recited water activity to achieve increase storage life because of the microbial inhibiting properties of natamycin. Claim 1 also recites that the amount of natamycin is effective to keep the product mold free for at least two weeks at ambient temperature. Ambient temperature

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is being construed to mean room temperature. Tangprasertchai et al is concerned with storing for at least three months and employs refrigerated conditions which, of course, further extends storage life. Since applicants' admission of the prior art (page I, para.5) of the specification discloses natamycin has an extremely effective and selective mode of action against a very broad spectrum of common food spoilage yeasts and molds with most strains being inhibited by concentrations of 1-15ppm, it would appear that the application of natamycin in Tangprasertchai would inherently be in an amount sufficient for mold free storage for two weeks at ambient temperature. In regard to claim 2, Tangprasertchai et al is considered to meet the recitation "and like baked products". In regard to claims 3-5, Tangprasertchai et al discloses water activity within the recited range. In regard to claim 6, since Tangprasertchai et al discloses the recited water activity, Tangprasertchai et al is considered to inherently teach a water activity sufficient to keep at least part of the deposited natamycin in dissolved form. In regard to claims 8-11, Tangprasertchai et al is considered to inherently meet the amount of natamycin to achieve the recited storage time and temperature for the reasons given above. In regard to claims 12 and 13, Tangprasertchai et al discloses the product is packaged in a protective envelope (claim 12) that can be moisture proof (claim 13). See, in this regard, col.5, para.1. of Tangprasertchai et al.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-13 are rejected under 35 U.S.C. 103(a) (based on 102(e)) as being unpatentable over Tangprasertchai et al (7,014,878), further in view of Malkki (3,996,386), applicants' admission of the prior art, Kaplow et al (3753,734), Glasser et al (3,655,404), Melnick (3,021,219), Coleman et al (6,210,723), Apicella et al (5,409,717), Cha et al (5,225,222), and the Encyclopedia of Food Technology (Johnson et al, 1974).

Tangprasertchai et al is detailed immediately above. As noted above, although it is not the intent of Tangprasertchai et al to store the product for only two weeks at ambient temperature, Tangprasertchai et al is being construed to provide an effective amount of natamycin which would be inherently sufficient to keep the product mold free when packaged for a storage time of two weeks at ambient temperature. In any case, as evidenced by Malkki, applicants' admission of the prior art, Kaplow et al, Glasser et al, Melnick, Coleman et al, Apicella et al, Cha et al, and the Encyclopedia of Food Technology, i.e. the art taken as a whole, the art is replete with teachings of providing baked products, as well as other food products, with a coating of natamycin, as well as other conventional antimicrobial compounds, such that the treated food is given a longer shelf life. The art taken as a whole teaches that the shelf life is extended whether the intention is to store the food product under refrigerated or ambient conditions. Malkki et al, e.g., discloses it was well established to apply antimicrobials to the surfaces of foods including baked goods, and to employ antimicrobials including pimaricin (which is another name for natamycin). Malkki also discloses that the treated food such as baked goods can be stored in a polyethylene bag within the recited range (e.g. 28 degrees C.). Kaplow et al and Glasser et al disclose antimicrobial stability at 100 degrees F for four

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weeks with antimicrobial surface treatment and also discloses pimaricin. Melnick, Coleman et al, Apicella et al, Cha et al and Encyclopedia of Food Technology are relied on as further evidence of the notoriously well known concept of applying antimicrobial compounds to the surfaces of food. Note further, that Apicella discloses that the treatment of bagels with antimicrobial agents prevents mold growth under ambient conditions for two weeks. To therefore modify Tangprasertchai et al, if necessary, and provide an amount of natamycin effective for two weeks storage at ambient temperature would have been an obvious result effective variable. Similarly, the particular amount of natamycin per area of food surface to accomplish the shelf life desired is seen to have been an obvious result effective variable in view of the art taken as a whole.

The remainder of the references cited on the PTO892 forms are cited as pertinent art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven L. Weinstein whose telephone number is 571-272-1410. The examiner can normally be reached on Monday-Friday 7:00 A.M.-2:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Steve Weinstein
STEVE WEINSTEIN
PRIMARY EXAMINER
10/27/06